IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 642 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWANBHAI GOVINDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS for Petitioner

MR ND GOHIL, APP. for Respondent - State of Gujarat.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 09/03/2001

CAV JUDGEMENT

1. This is an appeal filed against the order dated 5/9/1989 passed by the Special Judge, Surat in Special Case No.1 of 1988 sentencing the appellant-accused with R.I.for one year and fine of Rs.500/- and in default R.I. for two months for offence under section 5(1) read with section 5(2) of the Prevention of Corruption Act and under section 161 of the Indian Penal Code.

2. The appellant was functioning as

Talati-cum-Mantri at Atodara village of Olpad taluka in district Surat at the relevant point of time and thus he was a public servant. The father of the complainant expired on 1/1/1985 and he was owning one residential house in the village as well as certain agricultural lands. On such death the complainant, his mother, other brothers and sister became entitled to inheritance and the complainant approached the appellant for getting the name of the deceased deleted from the revenue records and simultaneously entering the names of the legal heirs in the records.

3. The case of the prosecution is that on 21/12/1986 a meeting took place at Isanpur village at the residence of the appellant, that initially the appellant told the complainant that it was not possible to transmit the name of the inheritors and that the complainant must understand in ways of life, and accordingly the appellant demanded Rs.350/- from the complainant for carrying out necessary mutation in the revenue records. After some bargaining it appears that a deal was stuck at Rs.225/and it was decided that the said amount shall be paid to the appellant in his office at Atodara between 10.00 a.m. to 11.00 a.m. on 23/12/1986.

4. The complainant thereafter approached the ACB at Surat at around 5.45 p.m. on 22/12/1986 and the said complaint was noted down by ACB Inspector Mr.Ahmad Mohamad Khoda. Thereafter, the complainant was directed to reach ACB office next day in the morning at 7.00 a.m. and as arranged by Shri Khoda two persons from the office of the Collector, Surat were present as panch. Thereafter, the panch and the complainant were introduced to each other by Shri Khoda, panch were informed about the complaint and the complaint was readover in presence of the panch witnesses. The complainant had while lodging the complaint given a copy of an application dated 15/12/1986 which had been forwarded to the appellant by Registered Post. A copy of the said application and the acknowledgment slip were annexed with the complaint. Thereafter, as directed by Shri Khoda, a Head Constable Uttam Yadav Yevle carried out the procedure of anthracene powder and ultra violet lamp on currency notes which were brought by the complainant. The currency notes were of denominations of Rs.100/- two each, Rs.20/- and Rs.5/- one each. Thereafter, the treated currency notes were placed in the left hand side upper pocket of the jersey which was put on by the complainant and he was instructed by Shri Khoda that only as and when the appellant made a demand for bribe should the complainant remove those notes from the pocket and

otherwise should not either touch the pocket or the notes, the complainant was further directed that after handing over the currency notes to the appellant the complainant should come out of the office and signal by way of spitting. A panchnama to this effect was carried out and in the said panchnama the numbers printed on the currency notes as well as treatment by anthracene powder and ultra violet lamp were also recorded in the panchnama. Hands of the complainant, both the panch witnesses, Shri Khoda etc. were also examined under the ultra violet lamp to show that there were no marks of anthracene powder.

5. The entire raiding team including complainant reached Atodara village and the complainant and panch witness no.1 went to panchayat office while Shri Khoda and the other staff remained waiting outside in the surrounding area. It is further stated that at around 10.45 a.m. the appellant arrived in State Transport Bus coming from Olpad and while coming to the panchayat office he went to the residence of one Hamidbhai, a peon of the panchayat office. The complainant and panch witnesses therefore went to the residence of Hamidbhai having seen the appellant going over there and the complainant inquired of the appellant - " you have arrived ? I have some work with you" and therefore the appellant told the complainant to go and wait at the office. Thereafter, the appellant came after sometime, opened the lock of the office and the appellant, the complainant and panch witness no.1 entered his office.

6. The prosecution case is that thereafter the appellant demanded the amount and the complainant handed over Rs.225/- being the currency notes which were already treated with anthracene powder and the appellant accepted the same with his right hand and placed it in his right hand side pocket of the pant. Thereafter, as per the arrangement a signal was made and panch witnesses No.2 and other persons of the raiding party reached there and carried out further proceedings in relation to the trap. Shri Khoda thereafter recorded details of the entire investigation in panchnama part-II and after recording the statements of various persons ultimately recorded the commission of crime and after informing Court sought permission for prosecuting. That such permission was granted on 22/4/1988 and accordingly the accused was produced in Court with the chargesheet on the said day.

7. After framing charges against the appellant-accused, as the appellant denied to have committed any offence the case was conducted and

ultimately the order of conviction was made on 5/9/1989.

8. Mr.Vyas, learned Counsel for the appellant has referred to the deposition of the complainant (Exh.9), the pedigree chart cum application dated Nil (Exh.11), deposition of Bhagubhai Gomanbhai Patel (panch witness Exh.12), panchnama (Exh.13) deposition of Shri Khoda, ACB Inspector (Exh.16) and the complaint at Exh.70. From these documents he made out the following points for consideration :

(A) That meeting of 21/12/1986 was of doubtful character.

(B) That panchnama was of such nature that the same cannot be believed.

(C) That use of anthracene powder was deprecated by various decisions of Supreme Court as well as our Court and hence acceptance cannot be said to be proved.

(D) That evidence of complainant was not sufficient and could not be believed to establish the charges against the accused.

(E) That mere recovery of money was not enough.

(F) That the complaint and the surrounding circumstances showed that the complaint was cooked-up.

(G) That sending an application on 15/12/1986 by Registered Post was unusual and unnatural and did not inspire any confidence in the complainant.

(H) That there were various discrepancies in statement of the complainant vis-a-vis the application made by him as well as vis-a-vis complaint.

(I) That complainant himself was a Police Constable and in such circumstances the accused would not dare to demand bribe from him.

(J) That though the alleged meeting took place on 21/12/1986 at the residence of the appellant the complaint is lodged on the next day in the evening and there is no explanation for the delay.

(K) That the conversation which took place at Hamidbhai's residence on 23rd morning negates that any meeting took place on 21st as alleged.

(L) That there is no acceptance of money because it is stated to be in presence of panch who is an interested person, interested in successfully carrying out the trap.

(M) For the purpose of establishing recovery of money, Head Constable Yevle has not been examined who was the person who carried out the entire procedure.

(N) That there are discrepancies in the panchnama and the deposition of the panch witnesses regarding the recovery of money and the marks found viz. location of the marks.

(O) That no finger prints seem to have been taken and there is no evidence led to show any such exercise having been carried out.

(P) That the complainant's statement has been taken two days after the raid.

(Q) That the evidence has been created by way of recovery of clothes.

(R) That there are discrepancies between deposition of Shri Khoda and what is recorded in Panchnama.

(Q) In support of these arguments, the following decisions were referred to and relied upon :

(i) 2000(5) SCC 21 - Meena (Smt) W/o.Balwant Hemke vs.State of Maharashtra.

(ii) (1999-1) 40 GLR 546 - Gopalla Ghisulal Chipa vs. State of Gujarat.

(iii) (1979-2) 20 GLR 190 - Nathalal Govindji Vaghela vs. State of Gujarat.

(iv) (1993-1) 34 GLR 753 - Ajitkumar Somnath Pandya vs. State of Gujarat.

9. The aforesaid decisions were cited in support of the submission that the use of anthracene powder was deprecated by the Court and the same was not a sure test and that it was for the prosecution to prove its case beyond reasonable doubt and in the present case there were various discrepancies which showed that the entire

story was got up by the prosecution and that the deposition of complainant, panch witnesses and Shri Khoda did not inspire any confidence because they merely repeated what had already been decided when the preparations for trap were made.

10. As against this Mr.N.D.Gohil, learned APP. referred to the deposition of the complainant at Exh.9, deposition of panch witness Bhagubhai Gomanbhai at Exh.12 and deposition of Shri Khoda at Exh.16 and contended therefrom that firstly, a demand was made by the appellant, secondly, the acceptance was also established, and thirdly which according to him was most important, that a cause existed for making demand for bribe. Elaborating further on the contention raised he stated that there was no dispute that powder marks were found on the right hand fingers and thumb as well as palm of the accused and also on the right hand side of the pocket, thus establishing the complicity of the accused. In relation to the submission that anthracene powder use was deprecated by the Courts, it was pointed out by Mr.Gohil that there was no ban on use of anthracene powder but it is laid down that when anthracene powder is used the prosecution had to clearly prove that no powder was detected with naked eye and that when ultra violet light was focused, there was emission of light blue fluorescent light. If the evidence showed positive result for both the tests it would be correct to infer that anthracene powder was present. For this purpose he referred to same decision which was relied upon by Mr.Vyas viz. 40 GLR 546 (Supra). Summing up his argument he stated that prosecution had proved beyond reasonable doubt its case because as per the complaint and as recorded in the panchnama the demand and acceptance stood established as the amount and the number of notes tallied. It was further submitted that minor discrepancies in the depositions of different persons are bound to exist and it is but natural, to the contrary in case if there are no discrepancies between the statements of different persons it would be most unnatural and could not be relied upon.

11. Having considered the submissions of both the sides as well as the evidence on record we find that this is not a matter where any interference is called for. While dealing with a matter emanating from default under the provisions of Corruption Act, it is necessary to be conscious and alert to this problem of corruption and eradication of the same. We are also conscious that there is every likelihood that dishonest persons are inclined to harass straightforward and honest public

servant. However, this is not a case where there exists a reasonable doubt, because by catching at some trivial flaws so called discrepancy in evidence should not be enough to permit a delinquent to go free.

12. In the present case on careful reading of judgment and order passed by the Special Judge, Surat, we find that the Court has taken into consideration the entire evidence on record, weighed both the pros and cons of each of the submissions and then come to the fundamental conclusion viz. that the prosecution has proved beyond reasonable doubt that an offence was committed. Though the learned Counsel on behalf of the appellant tried to assail the findings of the Trial Court one fundamental fact as to how and in what circumstances the marked currency notes were recovered from the pocket of the appellant is neither suggested not shown either before the Trial Court or even before us. The only defence raised before the Trial Court was that the said statement, viz. recovery of the currency notes from the pocket is incorrect. Even assuming for the sake of argument as urged by the appellant, that the complainant and the members of the raiding party were interested in success of the trap, yet there is nothing on record to show as to why the complainant lodged a complaint against the appellant. In fact, by choosing this course of action, a situation is being created by the complainant whereby there is every likelihood that his application for inheritance or change of name in the revenue records would stand delayed. There is no suggestion that the complainant and the appellant were known to each other prior to this point of time viz. when the complainant approached the appellant with his application; or that there was any enmity or rivalry between the two; or that the claim of the appellant was for seeking favour which otherwise would not be available to him under the law, and hence the appellant made a demand. Therefore, the factum of recovery of the marked currency notes from the pocket of the accused clinches the issue. Panch witness no.1, complainant as well as panch witness no.2 and Shri Khoda, ACB Inspector all deposed to this aspect of the matter, the same has been recorded in panchnama and there is no variance or discrepancy in any of the deposition in relation to this.

13. In relation to the anthracene powder the evidence on record shows that when the currency notes were treated with anthracene powder they were subjected to ultra violet test prior to treatment and post treatment; similarly hands of the complainant, the panch and other persons of the raiding party were also subjected to ultra

violet lamp prior to the raid. After the raid was carried out the marked currency notes whose numbers were also noted in the panchnama drawn before the raid was carried out tallied with those numbers from the recovered notes and similarly the deposition of the panch witness, the complainant and Shri Khoda, ACB Inspector also reported the same fact as after recovery when the ultra violet rays were focussed on the hands of the appellant as well as his right hand side pocket of trousers, presence of powder was seen namely it was found to emit light blue fluorescent light. It was not present to naked eye. Therefore, the test carried out by use of anthracene powder and ultra violet lamp per se cannot help the case of the appellant as the evidence on record goes to show that it was correctly carried out at both the stages viz. prior to treatment and post treatment.

14. In so far as application dated 15/12/1986 which was sent by Registered Post is concerned it was sought to be contended on behalf of the appellant that the complainant had already made an application which was undated and which is available at Exh.11 and hence, there was no occasion for him to send another application by Registered Post and such subsequent application was sent only for the purpose of creating evidence. In this connection, suffice it to state that in so far as undated application at Exh.11 is concerned the same pertains to claim for inserting the names of the mother, four brothers and sister in relation to agricultural lands only which have been mentioned in the said application, while from the application dated 15/12/1986 (Exh.10) it is apparent that the same pertains to both the properties viz. in so far as agricultural lands are concerned the earlier application is repeated while further application in relation to house no.128 is also made in the subsequent application. Therefore, it is not as if the subsequent application was repetition of the first application and was placed on record only to concoct the evidence as submitted, but contained something more.

15. In so far as various other discrepancies are concerned there are minor variations in narration of facts which are bound to exist from person to person and over a period of time in relation to the same person and these discrepancies even if are taken into consideration cumulatively do not carry the case of the appellant any further.

16. In view of the fact that the Trial Court has appreciated and discussed the evidence and contentions in detail we are not repeating the same here and for the

aforesaid reasons as well as for the reasons stated in the impugned judgment and order we confirm the order of conviction passed on 5/9/1989. The appeal is dismissed. Records and proceedings be returned forthwith.

Sd/-
(D.A.Mehta,J)

m.m.bhatt